

January 17, 1997

VIA UPS Next Day Air

Docket Office
California Public Utilities Commission
505 Van Ness Avenue, Room 2001
San Francisco, California 94102

Re: R.94-04-031/I.94-04-032; A.96-12-009, A.96-12-011, and A.96-12-019
Dear Docket Clerk:

Enclosed for filing in the above-entitled matter are the original and five copies of the **COMMENTS OF THE CALIFORNIA ENERGY COMMISSION IN RESPONSE TO JUDGE WEISSMAN'S DECEMBER 23, 1996 RULING.** Please return the extra copy in the enclosed, stamped, self-addressed envelope. Thank you for your attention to this matter.

Very truly yours,

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Enclosures

cc: ALJ Steven A. Weissman w/diskette (VIA UPS Next Day Air)
CPUC Service List

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

)	
Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulations.)))) <hr/>	Rulemaking 94-04-031
)	
Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.)))) <hr/>	Investigation 94-04-032
)	
Application of PACIFIC GAS AND ELECTRIC COMPANY To Identify And Separate Components of Electric Rates, Effective January 1, 1998.)))) <hr/>	Application 96-12-009
)	
Application of SAN DIEGO GAS & ELECTRIC COMPANY (U902-M) For Authority To Unbundle Rates and Products.)))) <hr/>	Application 96-12-011
)	
In the Matter Of The Application Of SOUTHERN CALIFORNIA EDISON COMPANY (U338-E) Proposing The Functional Separation Of Cost Components For Energy, Transmission and Ancillary Services, Distribution, Public Benefit Programs And Nuclear Decommissioning, To Be Effective January 1, 1998 In Conformance With D.95-12-036 As Modified by D.96-01-009, the June 21, 1996 Ruling of Assigned Commissioner Duque, Decision 96-10-074, and Assembly Bill 1890.))))))))))))) <hr/>	Application 96-12-019

**COMMENTS OF THE CALIFORNIA ENERGY COMMISSION
IN RESPONSE TO JUDGE WEISSMAN'S DECEMBER 23, 1996, RULING**

The California Energy Commission (CEC) takes this opportunity to respond to:

- a. the questions identified in Administrative Law Judge Weissman's December 23, 1996 Ruling regarding issues to be considered by the California Public Utilities Commission (CPUC) in response to the ratesetting applications filed by the utilities on December 6, 1996 (see sections 2-5 below); and
 - b. ALJ Weissman's request at the January 15, 1997 Full Panel Evidentiary Hearing that parties tell the CPUC what immediate action they recommend on these issues (see sections 1 and 6 below).
- 1. Commission action needed now with regard to the issues raised in the December 23, 1996 ALJ Ruling and at the January 15, 1997 Full Panel Evidentiary Hearing.**

The CPUC should not try to resolve the complex and contentious issues of metering, billing and information management on the basis of the existing incomplete record. Rather, the CPUC should establish a process by which industry stakeholders can resolve these issues themselves in a collaborative manner. Specifically, the CPUC should authorize a stakeholder working group to begin immediately to develop a comprehensive retail information management plan, as described in the CEC's December 20, 1996 Comments in response to D. 96-10-074.

Such a plan should address: the information flow needs of all parties in the restructured industry; the functionality of metering, communications and data management systems to meet those needs; protocols and standards that ensure the flexibility of systems to adapt to evolving market structure and accommodate consumer choice and technological innovation; governance of information management in the restructured industry; the roles various industry participants will be required or permitted to play, including default provider responsibilities; and, ensuring

compatibility between near-term provisions for direct access to begin on 1/1/98 and the long-term needs of the mature market.

The CEC believes that the objectives of restructuring will be better served if information-related issues are resolved by the parties themselves in a CPUC-authorized collaborative effort rather than by having the CPUC decide among mutually incompatible, self-interested proposals and impose a solution. Given the vast amount of valuable information that has accumulated in the August 30, 1996 Direct Access Working Group (DAWG) report, in the responses to D. 96-10-074 and at the January 15 Hearing, a collaborative effort to develop the plan we propose need not jeopardize the start of direct access on 1/1/98. The CEC is prepared to commit staff resources to contribute substantively and to facilitate such an effort, as we have done for the DAWG and other working group processes.

2. The definition of unbundling that each party suggests should apply to the Commission's consideration, here.

As discussed in detail in its September 12, 1996 comments in response to the Ratesetting Working Group Unbundling Report (RWG Report), the CEC urges a clear distinction between two highly related aspects of "unbundling" as commonly used at the CPUC:

- a. separation of a "bundle of services" into several components, each of which might then be provided by a monopoly at one or more levels of service at appropriate prices;
- b. opportunities for private, unregulated companies to provide one or more of these component services to end-use customers, while these same services or others may also continue to be provided by the regulated monopoly.

We believe that these two aspects are independent. Bundled services can be separated without being provided competitively. We urge the CPUC to consider first

separation of bundled services without competitive supply. Consideration of which services should be opened to competition should follow, and should focus on assessing natural monopoly properties and other compelling reasons for sustaining monopolies over specific services.

3. The unbundling arrangement that each party proposes for adoption.

The CEC has made a specific unbundling proposal that is included in the RWG Report as Option 4. (See Appendix 4 to the RWG Report.) Option 4 is further discussed in the CEC's 9/12/96 RWG Report Comments. Our proposal is applicable to the broader unbundling issues that were to be investigated pursuant to D.96-03-022, as well as to the revenue cycle services that are the focus today. We reiterate our general proposal and then describe how this applies specifically to the revenue cycle services in question.

a. General Approach

The essence of the CEC's proposal consists of four elements as follows:

1. immediate separation of bundled utility service into distinct component services within the context of utility supply; one objective of this activity is to determine the natural monopoly core of the utility distribution service;
2. after component services are unbundled, customers should be allowed to choose from (and therefore utilities should be required to supply) a variety of services and levels of serviced, e.g., utility billing on behalf of ESPs and customer bill enhancements to support more informed consumption decisions;

3. concurrent with 1. and 2., a stakeholder working group should develop a retail information management plan that specifies information management arrangements, infrastructure and protocols for the restructured industry, and;
4. once the foregoing steps have been accomplished, provision of non-natural-monopoly component services should be opened to the competitive market.

The policy justification for the CEC's proposal is its vision of meaningful customer choice for the vast majority of consumers. The CEC recognizes that large consumers are well-positioned to advance their own interests via bilateral contracts with energy providers. They will be the first in line for cheap energy and any costs they incur, including duplicative costs to support the billing systems of the utility and private energy service provider, will be more than offset by savings realized on the energy commodity.

Small consumers, however, are not well positioned to take advantage of competitive energy markets. Among the CEC's concerns is the possibility that large customers and suppliers will invest in unique technology that will inhibit and perhaps prevent a universal infrastructure that all customers and suppliers may use. This is why the CEC has advanced a comprehensive, phased approach to restructuring the electricity industry that will create the greatest opportunity for customer choice, including choices for customers who remain full-service customers of the utility distribution company (UDC), customers who choose virtual direct access (with or without contracts for differences) in addition to customers who elect physical direct access. These issues are discussed in greater detail in the CEC's December 20, 1996 comments in response to D.96-10-074 (the need for universal metering infrastructure based upon a retail information management plan); September 30, 1996 comments on the report to the CPUC of the Direct Access Working Group, and November 25, 1996 comments on

the Direct Access Working Group Report on Consumer Protection and Education (the conditions necessary to bring meaningful choice to small customers).

As noted at the January 15, 1997 full panel hearing, a key issue in any unbundling consideration is the provision of default services to consumers who "choose not to choose." As we described at some length in our November 26, 1996 Comments on the Direct Access Working Group report on Consumer Protection and Education, it is not essential that the UDC be the default provider of services. We noted that there can be a variety of reasons why individual customers of the utility might be hesitant to move from bundled service to competitive service. Each of these reasons may require a separate solution. Customers not able to participate due to limited income could receive subsidies if qualified by means tests. Customers who simply fail to act when offered choices could be allocated to private service providers in proportion to those who did choose, as was done in 1984 for those AT&T customers at the point of long distance telephone deregulation. There are options for default service for the revenue cycle services under consideration here that do not require the UDC to assume the functions of the integrated utility. The CPUC should carefully consider the need to ensure default service and the options to accomplish it before presuming that the UDC is the necessary solution.

b. Application to Revenue Cycle Services

The CEC recommended in its December 20, 1996 Comments that the CPUC base any unbundling decisions upon a comprehensive knowledge of the information requirements of both regulated and competitive players in the new industry structure. This concern was reinforced in the January 15, 1997 full panel hearing, at which virtually all testifying parties discussed the revenue cycle unbundling issue from a traditional utility perspective, i.e., the need for metering, telemetry and customer consumption data to support billing for energy consumption. This perspective is simply inadequate in the face of the new and more complex information requirements

stemming from the operation of the Power Exchange (PX) and the Independent System Operator (ISO), and the emergence of scheduling coordinators as the crucial interface between the ISO and the various aggregators and retailers who will provide direct access services to end-use customers.

The CEC's oral testimony urged the CPUC to recognize and consider the role of hourly energy data in supporting new activities that were not necessary under the traditional integrated utility structure, such as:

- (1) load forecasting and load bidding to the PX and ISO by UDCs and scheduling coordinators, respectively;
- (2) identification of energy imbalances as the basis for financial settlements; and
- (3) accurate allocation of financial responsibility for generation service usage among those direct access customers utilizing load profiles and the UDC bundled service customers receiving service under CPUC rates.

These activities will be required for participation in the new industry structure irrespective of the nature of the metering and data communication technologies or other aspects of revenue cycle services. As the CEC described in its proposal for a retail information management plan, it is essential to clearly understand these informational requirements for the whole industry structure, then to translate them into the functional requirements for meters, telemetry and access to usage databases before the CPUC rules on the question of unbundling revenue cycle services. The process proposed by the CEC could be accomplished within a few months if the CPUC clearly directs industry stakeholders to designate a representative working group to develop a draft plan for review and endorsement by the CPUC.

Therefore, we urge the CPUC not to make a final revenue cycle unbundling decision until such a retail information management plan has been developed and reviewed by the CPUC. If the CPUC determines that the delay of a few months seriously jeopardizes commencement of direct access on 1/1/98, it should limit any competitive supply of metering and other revenue cycle services so as to place any cost burdens on direct access customers rather than on UDC ratepayers.

4. Implications of revenue cycle unbundling on technology improvements, cost savings, and avoiding duplication of services.

The following discussion demonstrates why it is not appropriate to "bundle" the idea of separately identifying and offering component services with the idea of opening them to competitive supply. These two policy actions need not be undertaken simultaneously to yield substantial benefits.

For example, it is clear that technology innovation is enhanced by multiple firms competing for business. This does not mean, however, that technology innovation and its introduction to customers cannot occur through regulated monopolies. The local telephone providers in California have introduced perhaps a dozen customer features that fall outside the traditional bundle of local exchange services. These came about in a regulatory environment of local telephone monopolies, albeit an environment in which the local carrier was permitted to set the prices of these features (subject to CPUC review) and customers were permitted to choose whether to accept them on a case by case basis. Large numbers of customers now utilize call waiting, call forwarding, automatic redialing and other custom features, and readily pay for them because their benefits justify their costs.

What is unclear, however, is whether competitive supply elevates the technology level for all consumers. Those consumers who cannot afford customized services do not have them, and may not be able to afford even the full costs of basic service. The

CPUC has recently concluded a lengthy process of assessing universal service for local exchange telephone services, and has developed an arrangement in which subsidies are collected and applied to offset high cost of service locations. Without this regulatory intervention, the customer base in such locations, and those customers throughout California who cannot afford the full costs of basic service would not likely be offered technology advancements by competitive service providers.

In summary, technology innovations and their initial introduction may be stimulated by competitive supply of services, but elevating and sustaining the overall level of technology provided to all customers may require regulatory intervention in the form of subsidies or mandates for minimum service levels.

The following table describes some of the implications of the CEC's proposal to distinguish between unbundling as separation of services versus competitive supply of unbundled services:

Action	Technology Improvements	Cost Savings	Avoiding Duplication
Separation of Component Services	Tech improvements can be introduced to those customers interested.	Customers have some choices to match costs and benefits, and can choose to either reduce costs or increase value.	Selective duplication is possible if customer or supplier insists on providing service.

Competitive Supply of Separated Services	Multiple suppliers may accelerate innovation, but multiple suppliers may retard full penetration of any one technology, resulting in highly unequal levels of services.	(1) Private companies strive to reduce costs to serve their target market, but do not accept responsibility to serve all customers. (2) Private suppliers recover advertising, promotional and marketing costs in addition to service delivery costs.	(1) Individual customer duplication avoided, but all customers may pay higher costs per unit for multiple duplicate systems. (2) Default services provision to large numbers of customers not participating in direct access must be resolved.
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5. Market power concerns related to this issue.

In its revised Roadmap decision, the CPUC recently acknowledged its responsibility for addressing market power issues associated with restructuring, stating that "we are under a duty to consider and resolve, in the public interest, issues concerning competition, which include market power problems." (D.96-12-088, p.13.) Many parties assert, however, that market power issues are within the province of the Federal Energy Regulatory Commission (FERC). It is important to note that both the FERC and the CPUC must resolve certain market power issues. For FERC, it must be satisfied that each individual WEPEX applicant will not be able to exercise market power in the Power Exchange (PX). The CPUC, along with others, must examine market power issues through a different lens, one that focuses on retail market power issues. As requested by ALJ Weissman's Ruling, we will focus our immediate comments on retail market power issues as they relate to the issue of revenue cycle services.

The CEC has often expressed its position that unbundling is an essential element of our vision of consumer choice by providing options to consumers and facilitating the

emergence of new competitive suppliers. In the narrow context of revenue cycle services, emergent energy services providers have asserted that they will not be able to provide generation services to small customers in a way that will be cost effective for the customer and profitable for the provider unless revenue cycle services are unbundled and duplicate costs avoided or minimized. These parties have argued that because of necessary business costs it will not be profitable to compete against the PX price to serve small customers if competition is limited to the energy commodity. (See e.g. Option 5 of the RWG Report, attached as Appendix 5 to that Report.) Therefore, unbundling revenue cycle services or at least providing credits to avoid duplicate costs is essential to minimize retail market power of the UDC.

The CEC has previously asserted that it is essential that some revenue cycle services be provided as intermediates to energy service providers for their use in delivering generation services to customers and being compensated appropriately. For example, we have urged that billing services be separated for other revenue cycle services and various levels of service be provided to customers and/or to energy service providers. An application that has been discussed at length in the CEC's December 20, 1996 Comments is consolidated billing by the UDC for ESP generation charges, but with various degrees of customization of the overall customer bill that would highlight the ESP as a distinct entity. The simplest version involves the ESP name appearing on the bill in the line item for generation charges, while a more extreme version of this might involve multi-page bills with a separate page for generation service charges from the ESP enumerated on their paper and with their own corporate messages. AT&T and Pac Bell have coordinated this form of consolidated billing for many years. We welcome PG&E's apparent agreement to provide these billing services to ESPs that we heard described by PG&E's witness at the January 15 full panel hearing.

Application of this concept requires some conformity of classification of costs to ensure proper comparisons between UDC and ESP alternatives. For example, an element of

the UDC's business costs are those associated with providing energy, including UDC load forecasting, load bidding expenditures, and settlement determination costs, all of which rely upon the data collected by metering, data communications and information management services. It is important that these costs be unbundled (in the sense of separation of activities) from the distribution charge and classified as generation charges along with actual PX purchase costs. In this way, providers competing against PX generation supplied by the UDC will have a reasonable opportunity to compete on a cost basis. Failure to require classification of costs that result in "apples to apples" comparisons would provide an edge to the UDC that is completely unwarranted by the facts and true costs. This would be a regulatory source of retail market power that the CPUC can correct during the proceeding that adjudicates and approves utility rate applications filed December 6, 1996. This idea is more fully addressed in the CEC's December 20, 1996 comments in which the CEC advocates the unbundling of the business function as one of several ways we urged an expanded scope of effort beyond those directed by D.96-10-074.

Other retail market power concerns in the context of unbundling revenue cycle services include:

- a. the need to develop generation load forecasting techniques for load bids to the PX that do not require each ESP to provide its load bids to UDCs as the foundation for UDC load bids to the PX. Such "net" load bidding, apparently adopted by WEPEX for inclusion in Phase II submittals with FERC later this year, permits the UDC to acquire comprehensive load bid data for all customers that might allow it to improperly compete once the mandatory "buy from/sell to" restrictions on UDC activities are lifted;
- b. the need to develop energy imbalance settlement arrangements among scheduling coordinators and the PX in a manner that does not shift costs improperly, especially from the UDC's customers to direct access customers

that use load profiles in lieu of actual interval metering data. The apparent decision by WEPEX to abandon metering of each ISO grid out-take point, and to perform settlements on a zonal basis with scheduling coordinators, permits substantial cost shifting among all customers who do not have interval meters. If metering and semi-metering services such as load profiling are not properly supervised, billions of dollars of generation service costs will be allocated to customers on the basis of estimates. The CPUC should declare a regulatory oversight role for scheduling coordinators and ensure that fair and equitable arrangements are used to assign energy imbalance and other ISO costs to end-use customers;

- c. allowing the competitive affiliates of the UDC to "compete" against the UDC's provision of PX generation energy must be controlled by strong affiliate rules, including firewalls;
- d. access to customer information issues must be resolved in several respects. First, the UDC should not be allowed to use the customer information that it has to market energy, unless this information is made available on similar terms to all qualified competitions. Second, competitive affiliates must not have access to customer information held by the related utility, unless it is made available on similar terms to all qualified competitions. Third, the CEC strongly believes that all qualified energy services providers should have access to customer information, subject to the customers' rights to prevent disclosure of sensitive information. The CEC provided a detailed proposal to deal with these issues in its October 15, 1996 Reply Comments to the Direct Access Working Group Report, at pages 30-33;
- e. permitting utilities and/or successor UDCs to install new metering and data communication systems will "lock in" customers, much as witnesses at the January 15, 1997 full panel hearing described how Kansas City Power & Light and other utilities implemented such technologies in advance of any regulatory requirements from their state public service commission.

We conclude from these concerns that there are some substantial opportunities for the UDC to have retail market power stemming from the nature of the responsibilities assigned to it in the CPUC's December 20, 1995 Policy Decision, the means that the WEPEX process has selected to implement various aspects of the PX load bidding and ISO energy imbalance settlement processes, and the means by which the utilities have proposed to compute bills for customers in their December 6, 1996 rate applications. As has been concluded by the CPUC and apparently endorsed by FERC for "wholesale" generation market power, it may not be possible to completely eliminate such market power, but various mitigations may reduce its scope and importance. The process we have proposed for developing a retail information management plan would address retail market power concerns in the assessment of the roles that various parties can be permitted or required to play. We therefore recommend that the CPUC remain diligent in pursuing mechanisms to mitigate retail market power.

6. Conclusions

The CEC appreciates the opportunity to participate in the full panel hearing on January 15, 1997 and to file these supplemental comments. We urge the CPUC to resist the recommendations of parties proposing definitive, regulatory solutions to the issue of unbundling revenue cycle services. Most parties have large economic interests at stake in these decisions and tend to frame their arguments to support those interests. This is to be expected in anticipating a competitive environment. However, the industry as a whole and the public interest require a comprehensive understanding of information issues, which goes beyond any individual party's economic interests. Therefore, before allowing competitive supply of revenue cycle services and the development of metering and telemetry systems to support these services, it is essential to understand the nature of the information flows required to support the new industry structure. No single document now in existence describes these information requirements from the level of the ISO, PX and scheduling coordinators down to retail customers. We urge the CPUC to accept the CEC's

proposal to defer unbundling decisions until it receives a comprehensive retail information management plan from a representative stakeholder group, and is satisfied that it and the parties understand their roles in providing revenue cycle services to all customers. The CEC offers the resources of its staff to assist the CPUC and stakeholders in developing this plan on a schedule compatible with the opening of direct access on 1/1/98.

Date: January 17, 1997

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